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INTERNATIONAL CITY MANAGERS' ASSOCIATION

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SUMMARY OF REPLIES TO SELECTED MIS INQUIRIES

What topics have been of interest to MIS subscribers and how has MIS replied to inquiries on these topics?

Management Information Service is now in its 12th year. Besides preparing monthly reports on timely subjects, MIS answers 100 inquiries a month from nearly 1,000 subscribers. Answers point out trends, recommend examples of good practice, suggest possible courses of action, recommend references, and frequently include the loan of books, pamphlets, and other material from the MIS library. This report summarizes replies to some of the inquiries in which particular interest has been shown during the past year. The summarized subjects are:

- Gifts to Employees
- Regulation of Air Conditioning
- Payroll Deductions — Union Dues
- Overtime Pay for Police
- Substation Bill Collections
- Regulation of Service Stations
- Architectural Control
- Regulation of Private Swimming Pools

Gifts To Employees

Many city officials are puzzled about the acceptance or rejection of gifts sent to city employees. Some cities prohibit acceptance of gifts; others condone it informally; still others, probably a substantial majority, have no policy — written or unwritten.

The statement has been attributed to several public figures that "If you can eat it, drink it, or smoke it in one day, then you can accept it. Otherwise reject it."

Something on this order could be included in a memorandum from the city manager to all department heads. Such a statement might first show the problem of an employee's accepting gifts emphasizing the fact that an employee's first obligation is to the city not to individuals or companies. The memorandum might state that it is important that employees not become obligated or feel obligated in any way to the giver.

The city manager could point out that common sense on the part of department heads regarding the acceptance of gifts is a more realistic control of the practice than would be a directive by the manager itemizing what could or could not be accepted.

The memorandum could suggest that whenever there is doubt in the mind of the individual employee, a check should be made with the department head as to the advisability of acceptance. Department heads could then be encouraged to discuss the general question of gratuities and attendance at parties given by "pressure groups" and provide some general advice to their employees on the proprieties.

Some managers and other city officials have found that it was good public relations to send back all gifts, but to send them back with a covering letter saying that the gift is appreciated but

that in view of his position it cannot be accepted. It should be made clear that the return of the gift does not indicate in any way that the recipient did not appreciate it or that the recipient will not be entirely fair with the giver in the future.

A city might handle this situation with the following memorandum to all department heads:

The giving of gifts by private individuals and citizens to municipal employees at Christmas time as a friendly gesture for service rendered. However, this may be open to suspicion by all except the giver.

This year all departments are requested to adhere to the administrative policy of refusing, by written communication only, all personal gifts. The city council has a right to expect and demand the complete integrity of its employees free from suspect and certainly the acceptance of no Christmas gifts will continue to merit the confidence of all parties concerned with this policy. There is attached a sample copy of a letter sent to a person who left a gift in our office last year. We hope you use a similar approach, keeping a copy for your own records and protection.

COPY

Mr. John Doe
Anywhere, U. S. A.

Dear Mr. Doe:

May I take this opportunity to wish you a happy holiday season and also to thank you for the very nice Yuletide gift. The kindness on your part to think of us so generously at this festive season is very much appreciated.

The administrative policy, however, precludes our acceptance of any personal gifts, and I personally have made it a firm credence not to accept any type of material presentation.

I trust you will understand this administrative ruling is of a general nature and certainly does not point to anything beyond that of sound municipal practice.

Enclosed please find, therefore, your gift which I am returning, and I hope that our mutual cooperation during the coming year will be as pleasant and harmonious as it has been in the past.

Sincerely,

City Manager

Regulation of Air Conditioning

More and more cities are regulating air conditioning through enactment of ordinances requiring permits for their installation and operation, inspection of installed units, and requiring or at least encouraging the installation of water-conserving units.

Elmhurst, Illinois, requires water conservation devices to be installed so that city water is used only for make-up and flushing. The ordinance states, "All air conditioning units shall be equipped with water conservation devices so that water from the city mains shall be used for make-up and flushing purposes only. Any air conditioning system is prohibited from using water from the mains in excess of 0.2 gallons per minute per ton. Each air conditioning system shall be sub-metered using a water meter acceptable to the city of Elmhurst." The water and sewer superintendent is permitted to have free access to the premises at all reasonable hours.

The American Water Works Association model ordinance in addition to water conservation provisions similar to those for Elmhurst, requires installation of an automatic regulator to limit the amount of city water that may be consumed per hour per ton. The National Institute of Municipal Law Officers model ordinance requires a physical break between the city water line and the make-up device so that water cannot siphon back into the system during periods of low pressure. Manhattan, Kansas, encourages the use of conservation devices by levying a surcharge of \$2.50 per month per ton of manufacturer's rated capacity on all non-recirculating air conditioners during the

summer months. Ordinances should require that water be emptied into either the storm sewer or the sanitary sewer in accordance with state and local health regulations.

Phoenix, Arizona, requires a permit for installation, a mechanical inspection, and an electrical inspection of the wiring. Window air conditioners in Phoenix are controlled through the zoning ordinance. In residential areas, a cooler may project three feet into a seven-foot side yard, but in no case may the air conditioner be less than two feet from the lot line.

Payroll Deductions — Union Dues

A study made by the Municipal Finance Officers Association in March, 1954, *Payroll Deductions Made by Municipalities*, indicated that 27 of 89 cities surveyed made payroll deductions for employee labor union dues. In addition, 12 of 15 Canadian cities indicated that they made such deductions. Several cities also deduct employee association dues which some might consider the same as labor union dues. Another more recent study by the New York City Department of Labor showed that 272 of 322 cities over 25,000 population had employees in organized labor unions and that 74 of these 272 cities had a check-off for union dues.

In June, 1955, Milwaukee, Wisconsin, approved a resolution to provide for a union dues payroll deduction (check-off) plan for city employees who authorized the deduction. The plan, which became effective in January, 1956, is dependent upon cooperative efforts of union representatives who supply payroll authorization cards. The union representatives must also establish a central committee or committees to handle distribution of the dues collected for their respective locals. The estimated annual costs of making the deductions were \$4,640 plus an initial expenditure of \$4,900 for the preparation of necessary forms, supplies and equipment.

The MFOA report points out that the two main problems in payroll deductions for cities are (1) accounting machines have limitations as to the number of items that can be handled; and (2) increases in the volume of payroll deductions increases the cost of administration. According to the New York city survey, eight of the 70 cities reporting charge to cover the cost of servicing the deductions. Usually no charge is made for deductions which are required by law. Charges for payroll deductions, paid by the union, usually take one of the following forms: (1) a fixed fee for each deduction; (2) a fixed fee per month or per year for all such deductions; or (3) a pro rata share of the cost of administration. A minimum total charge may also be included in the agreement. Specific examples are shown in the following tabulation:

<u>City</u>	<u>Organization Charged and Type of Deduction for Which Charge Is Made</u>	<u>Basis of Charge</u>
Baltimore, Md.	Firemen's union dues	Pro rata cost of administration
Hartford, Conn.	Labor union dues	One-half cent for each deduction
Montreal, Que.	Labor union dues	Cost of making deduction (\$5.10 per hour). Rate established as pro rata cost of rent of tabulating machine and operator employee's salary
Philadelphia, Pa.	Labor union (applies to municipal hospital only)	AFL union pays nominal fee for a listing of each member's name and deduction each pay period.
Portland, Ore.	All deductions except governmental	Six cents per deduction with a minimum of \$10.
Toronto, Ont.	Labor union dues	Estimated cost of making deductions — \$810 for four labor unions

Overtime Pay for Police

Frequent inquiries are received regarding overtime payments to policemen. The 1952 *Municipal Year Book* shows that of 1,200 cities reporting, over one-half (612) pay policemen no overtime salary. Nearly 300 cities reported granting of compensatory time off, while slightly more than 300 cities said that policemen received cash payments for overtime.

The 1953 *Municipal Year Book* reports that 68 out of 1,154 cities surveyed pay policemen cash for court appearances; an additional 304 cities allow compensatory time off for court appearances.

The Northwestern University Traffic Institute recommends against overtime cash payment to policemen, although they suggest compensatory time off on an informal basis. They recommend granting one and one-half hours off for a morning spent in court and allowing the man to save his time until he has accrued a full day off.

The Traffic Institute suggests "officers days in court," days in which all of one officer's cases are brought in at once so that he appears only occasionally rather than part of every day. They also suggest that the calendar be adjusted to take advantage of the shift schedule — when the officer works nights the case can be called the first thing in the morning when court opens, and if he works afternoons his cases can be called late so that he can go on duty directly from the court room.

Tulsa, Oklahoma, has a one-day-a-week "hearing day" for all persons pleading "not guilty." Officers have to appear, in municipal court non-jury trials, only on Thursdays where formerly they appeared every day.

Substation Bill Collections

Several cities have designated substations for the collection of utility bills. These are of three general types: (1) operated by the city as a branch office; (2) operated privately but officially authorized by the city; and (3) operated privately without city authorization as a service to the customer. The most frequently used locations for these stations are banks and drug, grocery, or department stores.

Most of the cities having publicly operated substations bond the city employees even though a greater portion of revenue is collected in the central office by mail. Cities with privately operated substations may or may not have bonded employees operating these stations. In cases where these privately operated stations do use bonded employees, some cities will pay for the bonding while in other cities the bond will be required by the city but paid for by the station operator.

Private operators are compensated in one of four ways: (1) a flat fee per collection paid either by the city or by the customer; (2) a flat rate per station per month paid by the city; (3) a percentage of total collections paid by the city; or (4) no payment is made either by the city or the customer other than for supplies furnished by the city.

In some cases stations are selected by the city through competitive bidding thus permitting the city to choose the duration, locations, and situations best suited to its needs.

A good private substation should possess the following characteristics: (1) a degree of permanency, not moved every year; (2) a location convenient to the public; (3) a location with competent personnel to handle collections; and (4) a location with adequate space and facilities for handling peak work loads.

Setting up substations has the advantages of relieving peak cashier loads in the main city office since mass mail collections can be handled in the central office more quickly than individual collections. Such stations also provide convenience to the public, particularly to those who live in the outlying areas and those who do not have checking accounts.

Regulation of Service Stations

Because gasoline stations tend to create traffic congestion, pose special land use problems, and present a fire and explosive hazard, they should be subject to police power regulations

governing those aspects of the operation which might be detrimental to the public safety, health and welfare.

The three most common methods of regulating automotive service uses are: (1) special ordinances establishing regulations for maintenance and operation of stations; (2) fire and building code requirements for construction and storage of flammable liquids; and (3) zoning ordinance provisions requiring that stations be located minimum distances from property lines and certain named structures.

The courts have upheld the power of the city to regulate filling stations under general licensing ordinances and special laws relating to filling stations. Under a filling station ordinance the city council may issue operating licenses for all stations which comply with other requirements of the ordinance and which pay the required license fee. The methods of regulation include licensing of all filling station operators; control over location, design, and site improvement; control over operations and maintenance; continuing inspection; specifying standards of storage of petroleum products; and issuing regulations for the handling of these products.

The primary use of fire and building codes is to control the safety aspects of filling station construction and design. Provisions in the code should regulate vacant storeroom construction and design. Provisions in the code should regulate vacant storeroom construction, the construction of opening protectives in buildings, the construction of basements, gasoline storage, the location of pumps, and special restrictions.

Zoning ordinances reflect several different approaches to the regulation of filling stations. Some ordinances handle filling stations as permitted uses; others as special exceptions subject to review by the board of appeals; and some have "consent" provisions. Zoning ordinance regulations of filling stations are accomplished through three basic means: (1) definitions which distinguish between different types of automotive service uses, (2) enumeration as permitted (or prohibited) use in the various districts; and (3) special requirements that may be imposed upon all stations or those located in certain districts. Many cities have requirements in regard to minimum setbacks of facilities from any property line, minimum setbacks of facilities from any residential district boundary, and minimum setbacks from places of public assembly.

Whitefish Bay, Wisconsin, has a requirement in its zoning ordinance that no filling station may be within 500 feet of any school grounds, real estate owned or used by any religious corporation for religious purposes, or any existing public garage or filling station. This requirement was held to be valid exercise of the police power by the state supreme court.

Some cities regulate filling stations through the provisions requiring the consent of near-by property owners before a filling station can be built. The courts have almost without exception held such provisions to be illegal delegations of legislative authority.

Some of these zoning problems facing the city have not been completely answered by existing regulations. For example: Can the number of stations in a city be limited? Not as such. Several cities have provisions in the zoning ordinance which prohibit the construction of additional gasoline stations within the corporate limits of specified districts. The courts have held that such ordinances are unreasonable and arbitrary because they in effect create a monopoly for stations existing in the district. The courts have in effect said that there is no more reason to limit the number of service stations than there is to limit the number of food markets or restaurants. However, with the use of special ordinances, building codes, and zoning ordinances, many of the undesirable aspects of the city service station can be eliminated.

Architectural Control

Cities in Wisconsin and the New York metropolitan area have been active in architectural control, primarily in Wisconsin because of a 1955 state supreme court decision upholding an architectural control ordinance in Fox Point, Wisconsin. This decision is discussed fully in the January, 1956, issue of *The Municipality*.

The Fox Point ordinance is not concerned with aesthetic control as such but rather with the

preservation of property values. The ordinance does not attempt to specify a particular type or style of architecture, but requires that a proposed building "... not be so at variance with either the exterior architectural appeal and functional plan of structures already constructed or in the course of construction in the immediate neighborhood or the character of the zoning district... to cause a substantial depreciation in the property value of said neighborhood within applicable district..." Similar ordinances have been enacted in Englewood, New Jersey; and New Rochelle, Scarsdale, and White Plains, New York.

According to the Regional Plan Association there have been two basic approaches to this problem of architectural control within the New York metropolitan area. One approach is by the use of regulatory formulas in the zoning ordinance which spell out measurable elements of building design. The New Rochelle ordinance, for example, controls the exterior design and appearance of one family dwellings by requiring that two buildings fronting on the same street and within 150 feet of each other must differ from one another in three out of six measurable respects. These measurable factors are: (1) the height of the main roof; (2) the height of the main roof above the eaves; (3) the length of the main roof; (4) the width between the outside walls at the ends of the buildings; (5) the relative location of windows in the front elevation or in each of both side elevations; and (6) in the front elevation the relative location of garage, porch, and remainder of the building and the height or width of any portion of the building located outside the limits of the main roof.

The Englewood, New Jersey, ordinance states: "Houses within (150 feet of) each other shall be considered uniform in exterior design and appearance if they have any one of the following characteristics: (a) the same basic dimensions and floor plans are used without substantial deviation of one or more exterior elevations. (b) the same basic dimensions and floor plans are used without substantial changes in orientation of the house on the lots. (c) the height and design of the roofs are without substantial change in design and appearance. (d) the size, type and location of windows and doors in the front elevation are without substantial differentiation."

"In addition to the requirements specified in Section 3, there shall be not less than two separate basic house designs in every housing development consisting of eight or more houses, and not less than three basic house designs where there are fifteen or more houses."

The second approach to architectural control is through the creation of architectural review boards. Rye and Eastchester, New York, have created such boards to approve the design of proposed buildings. This is an effort to prevent excessive similarity or dissimilarity in the design of buildings. The Rye ordinance requires that the board's findings be divorced from personal preferences as to taste or choice of architectural style.

In Portsmouth, Ohio, an architectural review board was established in 1953. It is composed of five unpaid members including the city engineer, the building officer who also is zoning officer, one citizen member who is an architect or experienced builder, a representative of a bank or building and loan association, and the president of the local real estate board. The board powers include the regulation of design, use of materials, finished grade lines, and orientation of new buildings; the moving, improvement, razing, or other alteration of existing buildings; and the character, size, and cost of the building in relation to existing or desirable structures in the surrounding area.

Regulation of Private Swimming Pools

While most commercial swimming pools are regulated in zoning ordinances there have been few zoning provisions specifically related to the problem of private pools and private swimming clubs. In the ordinances which specifically permit swimming pools in a residential district, the pools are regulated in three different ways: as a principal permitted use (sometimes subject to the consent of the surrounding property owners), as an accessory use, or as a special exception.

The Des Moines, Iowa, zoning ordinance (amended in 1954) permits "private noncommercial recreational areas and facilities, swimming pools..." as principal uses in a residential district. No special requirements are made for setbacks, side yards, or parking areas other than those generally applicable throughout the district.

The Rye, New York, zoning ordinance (amended in 1952) contains a consent provision for

private pools in residential districts: "Swimming pools for private recreational use shall not be permitted within 50 feet of any lot line; and no permit shall be granted for such pool unless and until the petitioner files the consents duly acknowledged of the owners of 80 per cent of the property in the area deemed by the commission to be immediately affected by the proposed use." The lot line provisions indicate that private pools could not be located on narrow or small lots, if this provision is intended to apply to the "backyard pool."

The ordinances of New York City and Orlando, Florida, require that lights be erected over pools in such a manner that they are not a nuisance to neighbors. Reflectors which shield light away from adjoining property owners are required by Orlando, Florida.

According to a study prepared by the New York State Conference of Mayors, many cities regulating private swimming pools require approval of plans by the building inspector as well as his approval for use after construction. Design specifications are often included in regulatory ordinances. Most cities allow fiberglass and plastic pools in addition to those built of approved concrete.

The primary prohibition of do-it-yourself programs is in the preparation of plans and installation of plumbing. New York City and Pomona, California, require that plans be prepared by an architect or a qualified engineer. Installation of plumbing by a licensed plumber is required in Bronxville, Buffalo, New Rochelle, Spring Valley, Webster, and New York, New York; Beverly Hills, Pomona, Sacramento, and San Diego, California; El Paso, Fort Worth, and Houston, Texas; Miami and Orlando, Florida; and Roswell, New Mexico.

Unless a private pool is well fenced it may represent a real hazard to children. A pool might be classified as an "attractive nuisance" because it may attract children who are unaware of the danger of drowning and cause serious injury or death. In the winter months a pool may be a greater hazard than in the summertime since it is not in use and may be neglected by the owners. Webster, New York, requires only a three-foot fence while Fresno, California, requires a minimum height of five feet and a maximum height of six feet in addition to a self-closing and self-latching gate.

Most cities prohibit a cross connection when the public water supply is used to fill the pool. In cities which permit pool water to be taken from private wells, sanitary safeguards are provided. El Paso and Houston, Texas, require that these wells be 50 feet from a septic tank. Several other cities either have no well, have no septic tanks since the city is sewerred, or prohibit water from being taken from any source other than the public water supply.

Cities provide a plan for disposal of pool water, whether into the storm sewer, sanitary sewer, or by other means such as city approved drainage methods or use of septic tanks.

Sanitation systems are required in most instances. These include a recirculating system, a filtration system, a disinfection system, a combination of all of these, or other provisions spelled out in the ordinances. These might include rules for chlorination of water as in San Diego, California.

